

The Honorable Brian D. Lynch
Chapter 7
Hearing Location: Tacoma Federal Courthouse
Union Station, Courtroom I, 1717 Pacific
Avenue, Ste 2100, Tacoma, WA 98402-3233
Hearing Date: November 20, 2019
Hearing Time: 9:00 a.m.
Response Date: November 13, 2019

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re:

Case No.: 19-42329-BDL

Ericka Anne Michal

Chapter 7

Debtor

MOTION FOR RELIEF FROM STAY AND
MEMORANDUM IN SUPPORT THEREOF

COMES NOW, JPMorgan Chase Bank, National Association ("Creditor") and moves the Court pursuant to 11 USC §362(d) for an Order Terminating the Automatic Stay, allowing Creditor to proceed with any and all contractual and statutory remedies incident to the interest held by virtue of the note and deed of trust described below and attached as exhibits to this motion and memorandum.

I. RELEVANT FACTS

A. The Property

On or about October 13, 1998, Ericka A Michal executed a note in favor of Washington Mutual Bank, a Washington Corporation in the original principal amount of \$113,044.00 ("Note"). The debt described by the Note is secured by a deed of trust ("Deed of Trust") properly recorded and creating a lien against property commonly described as 1627 6th Ave SW, Puyallup, WA 98371 (the "Property").

1 Creditor is the holder of the Note and thus has standing to enforce the Note pursuant to
2 RCW §62A.3-301. The Deed of Trust was pledged as incident to the Note and thus, as the
3 holder of the Note, Creditor also has the right to enforce the Deed of Trust that follows the note.
4

5 Subsequent to the execution of the Note and Deed of Trust, Debtors have filed for
6 protection under Chapter 7 of Title 11 of the United States Code.

7 Prior to the filing, Creditor had initiated foreclosure proceedings and set a final
8 foreclosure sale for April 26, 2019. That sale date is now expired and a new date will have to be
9 set upon termination of the stay.
10

11 12 **B. The Debt**

13 As of September 1, 2019, Debtor is due for the December 1, 2012 payment. The
14 approximate amount owed under the terms of the Note is \$219,166.19. This is an approximation
15 of the lien, including principal balance plus accrued interest, late charges, escrow shortages and
16 other fees and costs, as allowed under the terms of the Deed of Trust. This estimate is accurate
17 as of the date provided to counsel for the Creditor and is intended only for the purposes of this
18 motion. This amount cannot be relied upon for any other purposes, including payoff of the
19 secured debt. A complete, date specific and itemized payoff figure may be obtained from
20 Movant upon written request to counsel for Creditor.
21
22

23 24 **C. The Value of the Property**

25 A 2019 Appraisal Reported value of the Property was \$285,000.00. Debtor has valued
26 the Property higher in the filed schedules.
27
28
29

1 **II. ARGUMENT AND AUTHORITY**

2 **A. Standing**

3 To prosecute a motion for relief from the automatic stay as to enforcement of a note and
4 deed, a movant must establish that it has an interest in the note, either as a holder, or as a party
5 entitled to enforce the note. See *In re Veal*, 450 B.R. 897 (9th Cir. BAP 2011). In the case at bar,
6 the declaration and exhibits supporting the motion establish that Creditor is the holder of the
7 Note and thus has standing to prosecute the present motion.

8
9 **B. Basis for Relief from Stay**

10 Under 11 U.S.C. 362(d)(1), the automatic stay may be terminated for cause. In the case at
11 bar, the Debtor has failed to make payments as due dating back many years and has previously
12 filed for protection under the bankruptcy code only to have the case dismissed for failure to file
13 information. The Debtor has also failed to make payments post-petition and failed to timely file
14 required schedules in the present case. To the extent that the trustee will liquidate the Property
15 for the benefit of the estate, Creditor will cooperate with those efforts. Absent that liquidation,
16 the stay should be terminated for the cause stated.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

29 //

1
2 **III. RELIEF REQUESTED**

3 For the reasons stated above, Creditor moves the Court for an Order terminating the pending
4 automatic stay to allow Creditor to send to any party or parties protected by the automatic stay
5 any and all notices required by applicable state and/or federal law or regulation. Creditor further
6 moves the Court to terminate the automatic stay to allow Creditor to take such actions with
7 respect to the Property as are provided for under applicable non- bankruptcy law, including but
8 not limited to, informing Debtor(s) of any loan modification, short sale, or other loss mitigation
9 options and for any other relief the Court deems appropriate.
10
11

12 Dated: October 25, 2019

McCarthy & Holthus, LLP

14 /s/ Lance E. Olsen

15 Lance E. Olsen, Esq. WSBA 25130
16 Michael S. Scott, Esq. WSBA 28501
17 Attorney for Movant
18
19
20
21
22
23
24
25
26
27
28
29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

CERTIFICATE OF SERVICE

On 10/25/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING THE MOTION AND DECLARATION** on the following individuals by electronic means through the Court's ECF program:

TRUSTEE
Brian Budsberg
trustee@budsberg.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Salvador Arroyo
Salvador Arroyo

On 10/25/2019, I served the foregoing **NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY; MOTION FOR RELIEF FROM AUTOMATIC STAY; DECLARATION IN SUPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY AND ALL EXHIBITS SUPORTING THE MOTION AND DECLARATION** on the following individuals by depositing true copies thereof in the United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTOR
Ericka Anne Michal, 1627 6th Ave SW, Puyallup, WA 98371

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Hue Banh
Hue Banh